

ESTTA Tracking number: **ESTTA95832**

Filing date: **08/22/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Proline Sistemas Ltda.
Granted to Date of previous extension	08/23/2006
Address	9851 NW 58 Street # 123 Doral, FL 33178 UNITED STATES
Attorney information	Dan Augustyn Augustyn Law Office 770 N. Cotner Blvd. Ste. 114 Lincoln, NE 68505 UNITED STATES law@danaugustyn.com Phone:402 464 4326

Applicant Information

Application No	78574867	Publication date	04/25/2006
Opposition Filing Date	08/22/2006	Opposition Period Ends	08/23/2006
Applicant	The Nunez/Martinez Partnership 380 n.w. 48th place miami, FL 33126 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and sevicees in the class are opposed, namely: dietary supplement

Attachments	EmagreceSimOpposition.pdf (3 pages)(9092 bytes)
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Signature	/Dan Augustyn/
Name	Daniel Augustyn
Date	08/22/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 78574867

For the mark EMAGRECE SIM

Published in the Official Gazette on April 25, 2006

Opposition No. _____

Proline Sistemas Ltda.

v.

The Nunez/Martinez Partnership

NOTICE OF OPPOSITION

Proline Sistemas Ltda., a Brazilian Corporation
9851 NW 58 Street # 123 Doral FLORIDA 33178

Represented by Daniel Augustyn, Nebraska Bar #22623

Augustyn Law Office

770 N. Cotner Blvd. Ste 114

Lincoln, Nebraska 68505

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The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Defendant is the Nunez/Martinez Partnership consisting of Sergio M. Nunez and Vivian C. Martinez, both U.S. Citizens. The current address listed on trademark application Serial No. 78574867 is 380 n.w. 48th place miami FLORIDA.
2. Trademark application Serial No. 78574867 is for the mark "Emagrece Sim" for "dietary supplements." This mark was filed February 25, 2005.
3. Defendant filed trademark application Serial No. 78574867 as an "intent to use" filing and has not filed an allegation of use. The current filing basis of this mark is 1B.
4. Plaintiff is Proline Sistemas Ltda. a Brazilian corporation.

5. Plaintiff has registered the trademark “EmagreceSim” for “dietary supplements” in Brazil. The registration number for this registration is 826729185. This mark was registered 7/10/2004.
6. Plaintiff has filed trademark application Serial No. 78739312 for the mark “EmagreceSim” for “dietary supplements.” This mark was filed October 24, 2005. This current filing basis of this mark is 44E.
7. Plaintiff has continuously used the mark “EmagreceSim” for “dietary supplements” in commerce in the United States since at least as early October 29, 2004.
8. Defendant’s application was cited by the USPTO trademark attorney as confusing. The trademark attorney stated “The present applied for mark EMAGRECESIM and the prior pending mark EMAGRECE SIM are practically identical in appearance, and are phonetic equivalents and are thus similar sounding.” Office Action dated April 28, 2006.
9. The two marks are very similar and are likely to cause consumer confusion.
10. Plaintiff will be damaged by consumer confusion and other damage if Defendant’s mark is registered.
11. Defendant’s mark should be denied registration under Trademark Act Section 2(d).
12. Plaintiff’s mark has gained sufficient notoriety as to be considered a famous and distinctive mark.
13. Plaintiff’s mark is a famous and distinctive mark in Brazil and the United States.
14. Defendant’s application for registration of the mark came after the mark became famous.
15. Defendant’s mark when used would cause dilution of Plaintiff’s mark.
16. Defendant’s mark should be denied registration under Trademark Act Section 43(c).

17. Plaintiff therefore requests that registration of the opposed mark be denied and for such other and further relief as is deemed just and proper.

By /Dan Augustyn/ Date 8/22/2006
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